



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

**AUGUSTA COOPERATIVE FARM BUREAU, INC.**

**(VPA Permit No. VPA01562)**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and Augusta Cooperative Farm Bureau, Inc., for the purpose of resolving certain violations of environmental laws and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "ACFB" means Augusta Cooperative Farm Bureau, Inc., the owner and operator of the Facility.
7. "Facility" means the ACFB plant and grounds located in Augusta County, Virginia.
8. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
9. "The Permit" means Virginia Pollutant Abatement Permit No. VPA01562 issued to the Facility, which became effective October 10, 1995 and expired October 10, 2005.
10. "NOV" means Notice of Violation.
11. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.
12. "O&M" means operations and maintenance.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. ACFB owns and operates the no discharge facility serving the fertilizer and pesticide dealer in Augusta County, Virginia, which was the subject of the 1995 Permit (the Permit is undergoing reissuance). The Permit requires that ACFB not have discharges of pollutants from the Facility except for 25 year, 24 hour storm events or greater.
2. On May 26, 2005, DEQ received a pollution complaint regarding a fish kill on Poor Farm Draft. On May 26, 2005, DEQ conducted an initial fish kill investigation during which staff observed 705 dead fish and other biota.
3. On May 27, 2005, DEQ staff continued the fish kill investigation and count on Poor Farm Draft. DEQ staff conducted an inspection of the Facility as a result of the fish kill investigation. DEQ staff observed two puddles in the Facility's storm water channel which had a strong ammonia smell and brown tan/whitish sediment. In addition, staff observed an ongoing discharge from the Facility's storm water outfall causing tan foaming in the receiving stream. The sampling of the wastewater in the storm water ditch had an ammonia concentration of 7000 mg/l. The sample of effluent from the Facility's storm water outfall had an ammonia result of 350 mg/l. The dead fish, frogs, salamanders and macro-invertebrates were found below the point where the ACFB discharge enters Poor Farm Draft. DEQ staff determined that 3,074 fish were killed on a stream reach of approximately 4.3 kilometers. In addition, many dead

frogs, crayfish, worm and insects were observed in the effected reach of stream. No dead fish were found upstream of the Facility's outfall.

4. On May 31, 2005, DEQ staff conducted a follow-up inspection of the Facility as a result of the fish kill investigation to determine the status of Plant operations preceding and during the fish kill event. This inspection identified a number of operation and maintenance ("O&M") deficiencies at the Facility. The deficiencies included the failure to properly clean up a fertilizer spill on the Facility's fertilizer plant roof in the location of company fertilizer/chemical conveyors. The DEQ staff documented an unpermitted discharge of pollutants to State waters as a result of the fertilizer spill and rainfall events as traced from the Facility's roof to the storm water drains and discharged from the storm water outfall. The area surrounding the Facility experienced storm events immediately preceding the fish kill, none of which were 25-year, 24-hour storm events. The Permit requires that ACFB not have discharges of pollutants from the Facility except for 25 year, 24 hour storm events or greater. The operational deficiencies led to an unauthorized discharge of pollutants (fertilizer/ammonia) which caused the fish kill.
5. DEQ issued NOV No. W2005-07-V-0002 on July 19, 2005, to ACFB for violations of the Permit's prohibition of discharge of pollutants to State water. The NOV also cited ACFB with failure to maintain a minimum free board of two (2) feet at all times in the storm water storage pond.
6. On August 15, 2005, DEQ met with ACFB in an informal conference to discuss the NOV and resolution of the violations. The August 15, 2005, meeting included discussions of the Facility operations, any corrective actions that ACFB may have taken to date to address the Facility's problems and the need for a plan and schedule of corrective actions to return the Facility to compliance with Permit requirements.
7. By letter dated September 7, 2005, ACFB submitted to DEQ a written plan and schedule of corrective actions to return the Facility to compliance with the Permit's requirements. Sections of this plan and schedule have been incorporated into Appendix A of this Order.
8. As of October 1, 2005, ACFB began daily inspections of all drains to the storm water holding pond, the storm water outfall, the fertilizer plant roof area, and the storm water holding pond's freeboard.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders ACFB, and ACFB agrees, to perform the actions described in Appendix A of this Order.
2. Within 30 days of the effective date of this Order, ACFB shall pay a civil charge of **\$10,200** in settlement of the violations cited in this Order. Payment shall be by check,

certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

ACFB shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check.

3. In addition, ACFB shall provide 2 separate checks payable to "Treasurer of Virginia", one check for the amount of \$1,368.76 to cover the costs of the fish kill investigation. ACFB shall also provide a check for the amount of \$353.80 to cover the fish replacement costs. ACFB shall pay these fish kill costs within 30 days of the effective date of the Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of ACFB, for good cause shown by ACFB, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, ACFB admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. ACFB consents to venue in the Circuit Court of the City of Staunton for any civil action taken to enforce the terms of this Order.
5. ACFB declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative

proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by ACFB to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. ACFB shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. ACFB shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ACFB shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which ACFB intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

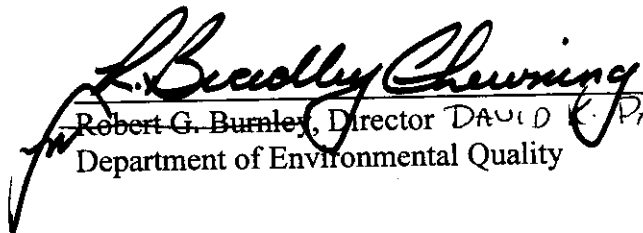
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and ACFB. Notwithstanding the foregoing, ACFB agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. ACFB petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
- b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to ACFB.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve ACFB from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of ACFB certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind ACFB to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of ACFB.
13. By its signature below, the Augusta Cooperative Farm Bureau, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 20 March, 2006.

  
Robert G. Burnley, Director DAVID K. PAYLOR  
Department of Environmental Quality

Augusta Cooperative Farm Bureau, Inc. agrees to the issuance of this Order.

By: Dan W Phillips

Title: General Manager

Date: 12/7/05

Commonwealth of Virginia

City/County of Augusta

The foregoing document was signed and acknowledged before me this

7 day of December, 2005, by Daniel W. Phillips  
(name)

who is General Manager of Augusta Cooperative Farm Bureau, Inc., on  
(title)

behalf of said company.

K. P. Smith  
Notary Public

My commission expires: May 31, 2006

**APPENDIX A**  
**SCHEDULE OF COMPLIANCE**  
**AUGUSTA COOPERATIVE FARM BUREAU, INC.**

1. ACFB shall continue daily inspections of all drains to the storm water holding pond, the storm water outfall, the fertilizer plant roof area, and the storm water holding pond's freeboard. ACFB shall record these inspections in the company's daily log.
2. On October 1, 2005, ACFB conducted an employee training meeting. ACFB shall, on a quarterly basis thereafter, conduct training meetings with the company employees in the fertilizer plant area to reinforce the need for proper operations and maintenance and the cleanup of any spills at the Facility.
3. On December 1, 2005, ACFB submitted to DEQ for review and approval the revisions to the O&M Manual. ACFB shall respond to any comments regarding the O&M Manual **within 30 days** of receipt of written comments.
4. **By December 15, 2005**, ACFB shall verify that the pumping/valving/piping equipment is properly functioning to be able to pump storm water holding pond water to the Augusta County Service Authority STP for treatment under emergency situations to ensure that the holding pond does not exceed the freeboard requirements.
5. **By December 31, 2005**, ACFB shall complete construction of a stainless steel containment vessel under the vertical elevators to catch any product and/or rain water from the Facility's fertilizer plant roof. This construction will also include the completion of piping connecting the vessels to the drain to the company's storm water holding pond.
6. ACFB shall submit semi-annual progress reports to DEQ, with the first report being due **January 10, 2006**. Subsequent Progress Reports will be due by **July 10, and January 10**, along with the Facility's Discharge Monitoring Report until the cancellation of the Order. The semi-annual progress reports shall contain:
  - a. a summary of all work completed since the previous progress report in accordance with this Order.
  - b. a projection of the work to be completed during the upcoming semi-annual period in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.
7. No later than **14 days** following a date identified in the above schedule of compliance ACFB shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice



shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.